



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

JUN 2 2011

Re: **H. Seeberg Building, 113-125 Genesee Street, Buffalo, New York**
Project Number: 24957

Schwinn-Mandel Building, 111 Genesee Street, Buffalo, New York
Project Number: 24956

Baldwin Building, 109 Genesee Street, Buffalo, New York
Project Number: 24930

Werner Photography Building, 101-103 Genesee Street, Buffalo, New York
Project Number: 24928

Dear

I have concluded my review of your appeal of the decision of Technical Preservation Services (TPS), denying certification of the rehabilitation of the properties cited above. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank you and _____ for meeting with me in Washington on April 12, 2011, and for providing a detailed account of the projects.

The four buildings subject to this review are located in the Genesee Gateway Historic District, which was designated a "registered historic district" on November 23, 2010. Each of the four was certified as contributing to the significance of the district on December 3, 2010. Because the structures were not functionally related historically, TPS reviewed each one as a separate rehabilitation project, as dictated by the regulations governing the program: *"For rehabilitation projects where there is no historic functional relationship among the structures, the certification decision will be made for each separate certified historic structure regardless of how they are grouped for ownership or development purposes."* [36 CFR § 67.6(b)(4)]. Accordingly TPS reviewed the rehabilitations as four separate projects, and found each one not to meet the Secretary of the Interior's Standards for Rehabilitation (Standards) for various reasons. Some treatments are common to each of the four buildings; others are unique.

After careful review of the complete record for these projects, I have determined that their rehabilitations are not consistent with the historic character of the properties and the historic district in which they are located, and that the projects do not meet the Standards. Therefore, the denials issued on January 19, 2011, by TPS are hereby affirmed. However, I have also determined that the rehabilitations of the H. Seeberg Building, the Baldwin Building, and the Werner Photography Building could be brought into conformance with the Standards, and thereby be certified, if the corrective measures described below are undertaken on these three structures. As articulated below, I see no practicable way to bring the work

undertaken on the Schwinn-Mandel Building into conformance with these same Standards. As required by the program regulations cited above, I shall address each of these rehabilitations separately.

H. Seeberg Building, 113-125 Genesee Street

The rehabilitation of the H. Seeberg Building (built ca. 1840 and modified in 1875) was found not to meet the Standards by TPS owing to construction of an elevator tower on the roof and a glass-enclosed stair tower along the Oak Street side of the building. I agree with TPS that these new features have impaired the historic character of the building. The elevator tower rises above the structure at the point where the building joins the taller Schwinn-Mandel Building next door. It is consequently perceived more as an addition to the Schwinn-Mandel Building than to the H. Seeberg Building. I have determined that the mechanical equipment mounted in a visually prominent position above the elevator tower calls inordinate attention to the new feature, more so than the brick mass of the elevator tower itself. As a result the rehabilitation contravenes Standards 2 and 9. Standard 2 states: *"The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided."* Standard 9 states: *"New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment."*

With regard to the glass-enclosed stair tower, I have determined that, although it impairs the historic character of the Oak Street side of the building, it is not sufficient to cause the overall rehabilitation to fail to meet the Standards. Accordingly, the stair tower has not entered into my decision. With regard to the elevator tower, it is the mechanical equipment on top and not the tower itself that brings the rehabilitation of the H. Seeberg Building into conflict with the Standards. I have determined that removing the mechanical equipment from the top of the elevator tower and relocating it to a less visible location could bring the above-described deficiencies in the rehabilitation of the H. Seeberg Building into conformance with the Standards.

Schwinn-Mandel Building, 111 Genesee Street

The rehabilitation of the ca. 1878 Schwinn-Mandel Building was found not to meet the Standards by TPS owing to construction of a rear addition with a loading dock that faces Oak Street, a rooftop addition that incorporates the elevator tower mentioned above, the addition of a canopy over the storefront, and the insertion of a lowered ceiling on floors one through three. I agree with TPS that each of these treatments brings the project into conflict with the Standards. The rear addition covers the entire south façade of the Schwinn-Mandel Building and part of the south façade of the H. Seeberg Building. The elevator tower over the H. Seeberg Building connects to the Schwinn-Mandel Building additions, forming a single mass that extends across and rises above nearly the entire east elevation of this latter structure at the third story. The east elevation of the Schwinn-Mandel Building was formerly exposed above the party wall with the lower H. Seeberg Building, and is now largely obscured, including part of an historic painted sign. Similarly, the rooftop addition is prominently visible above the lower Baldwin Building on the west. The new canopy across the storefront is comprised of an exposed steel frame that conveys an industrial character that is incompatible with the historic character of this nineteenth-century commercial structure. The new lowered ceilings are prominently visible beneath the storefront transom on the first floor and beneath the tops of the windows on the second and third floors. Consequently, I have determined that each of these treatments causes the project to contravene Standards 2 and 9, cited above. Although it would be possible to remove or modify the canopy and modify the new ceilings to comply with the Standards, the rear and rooftop additions and loading dock are essentially permanent. Consequently, I do

not foresee any practical means to bring the overall rehabilitation of the Schwinn-Mandel Building into conformance with the Standards.

Baldwin Building, 109 Genesee Street

In the rehabilitation of the 1903 Baldwin Building, new lowered ceilings were added on the first and second floors. With little setback, the ceilings are prominently visible from the exterior, and add a new and incompatible feature. As a result, TPS determined that the project fails to meet Standards 2 and 9, cited above. However, although I agree with TPS that the lowered ceiling heights are incompatible with the historic character of the Baldwin Building, I have determined that this deficiency could be remedied, if the ceilings were to be modified by keeping the ceiling heights above the storefronts and window heads, and set back from the façade sufficiently so as to not be prominently visible from the exterior. This change would bring the above-described deficiencies in the rehabilitation of the Baldwin Building into conformance with the Standards.

Werner Photography Building, 101-103 Genesee Street

Like the Baldwin Building, the historic character of the 1895 Werner Photography Building suffered from the insertion of lowered ceilings that are prominently visible from the street. Consequently, TPS determined that this project also fails the requirements of Standards 2 and 9, cited above. And here again, although I concur with TPS that the lowered ceiling heights are incompatible with the historic character of the building, I have determined that this impediment to certification of the Werner Photography Building could be remedied if the work were modified in the manner described above for the Baldwin Building. This change would bring the above-described deficiencies in the rehabilitation of the Werner Photography Building into conformance with the Standards.

If you choose to proceed with the corrective measures described here for the H. Seeberg Building, the Baldwin Building, and the Werner Photography Building, prior to undertaking construction, you should send amendments describing the remedial work in detail to this office, attention: _____, with a copy to the State Historic Preservation Office. I will review any submissions as soon as practicable.

However, although TPS cited deficiencies in the already completed work as the primary cause for the denials of certification issued on January 19, 2011, TPS also noted that the Part 2 applications did not include descriptions for the proposed rehabilitation of substantial portions of the interiors in each of the four buildings. Instead, the remaining rehabilitation work was described in the Part 2 applications solely in the form of tenant guidelines for fit-out. The affected interior spaces included 1) the entire interior of the H. Seeberg Building, 2) the third and fourth floor of the Schwinn-Mandel Building, 3) the third floor of the Baldwin Building, and 4) the second, third and fourth floors of the Werner Photography Building. In each of the denial letters, TPS concluded that,

Even if the work completed to date met the Standards, we would be unable to issue a preliminary determination that the rehabilitation of this building meets the Standards based solely on tenant guidelines for fit-out. Tenant guidelines are acceptable for discrete spaces retaining little historic fabric. They are not a substitute for a specific description of rehabilitation work (TPS decisions of January 19, 2011, at page two for the H. Seeberg and Schwinn-Mandel Buildings, and page one for the Baldwin and Werner Photography Buildings)

With regard to the inadequacy of tenant guidelines for fit-out in describing the rehabilitation of entire floors of a building, I concur with TPS. Consequently, even if remedial work were successfully completed, unless the Part 2 applications are amended with descriptions of the proposed rehabilitation work in all of the interior spaces, I would still be unable to issue a preliminary determination that the rehabilitations of the H. Seeberg, Baldwin, and Werner Photography Buildings meet the Standards.

Finally, please remember that these projects will remain ineligible for the tax incentives until they are designated "certified rehabilitations" following completion of the overall projects.

As Department of the Interior regulations state, my decision is the final administrative decision with respect to the January 19, 2011, denial that TPS issued regarding rehabilitation certification. A copy of this decision will be provided to the Internal Revenue Service. Questions concerning specific tax consequences of this decision or interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Burns", with a stylized flourish at the end.

John A. Burns, FAIA
Chief Appeals Officer
Cultural Resources

cc: SHPO-NY
IRS